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JAMES H. MCKENNEY,
Clerk

No. 251.

Motion to strike out brief.

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Supreme Court of the United States

OCTOBER TERM, 1900.

Filed April 18, 1901.

I. STANTON CARTER, on Behalf of OBERLIN M. CARTER, Appellant,

vs.

ROBERT W. McCLAUGHRY, Warden of the United States Penitentiary at Fort Leavenworth, Kansas.

Statement and Motion as to Brief of Solicitor General.

In the application made by Oberlin M. Carter for admission to bail it was briefly stated that the question now pending in this case before this court, and the only question, is whether the court-martial that tried Captain Carter on certain charges and specifications had jurisdiction to impose the penalty of imprisonment, to which he is now being subjected in the penitentiary at Leavenworth, Kansas.

Carter claims that that court did not have jurisdiction, and, for the purpose of having that question determined, instituted this *habeas corpus* proceeding; and, the decision

being against him in the court below, he brought the case to this court, and is asking only for the judgment of this court on that question.

This court has decided so many times that a proceeding in *habeas corpus* cannot be used as a writ of error or appeal, and the law on this subject being so well settled, it is useless to cite authorities in that regard. Counsel for Captain Carter, recognizing this well-settled condition of the law on this subject, has not sought to have this court consider any question of error that might have occurred in the trial of the case before this court-martial, either in the admission of evidence or the refusal to admit evidence, nor to review the evidence, for the purpose of trying to have this court determine that the court-martial had committed error in respect of the admission or rejection of evidence or in its conclusions upon the weight of the evidence. To have done so would have justly subjected counsel to a rebuke by this court.

The Solicitor General, in his brief in opposition, has taken occasion to make some very broad assertions in regard to the guilt of Captain Carter not based upon any matters appearing in the record, but apparently based upon matters appearing in some other proceeding in New York, before a commissioner, to which proceeding Carter was in no way a party; and also, upon his own allegations, that the Government had discovered evidence which would demonstrate that Carter and others had defrauded the Government of $2,169,159.06, and that Carter had personally attended to the division of this money between himself and others, and he enters upon a description of the manner in which this division was made.

How the Solicitor General got these alleged facts or from whom he got them he does not say; and upon what legal principle he would attempt to justify the interjection of matters of this kind in a proceeding of this character it is impossible to conceive. I venture to say that he will not pretend that the matters to which allusion has been made were ever procured in any proceeding wherein Captain Carter had an opportunity to be heard.

In view of this broad denunciation of Captain Carter by the Solicitor General, upon assertions of facts not found in any record to which Captain Carter was in anywise a party, and with reference to matters not before this court, and which have nothing whatever to do with the question that is before the court, I trust that I may, without transcending the bounds of propriety, state that Captain Carter denies the truth of these statements, asserts that he is innocent of the offense with which the Solicitor General charges him, and that he is ready, willing, and anxious to try the question as to whether he is or is not guilty of having conspired against the Government and embezzled its moneys, before any civil tribunal, anywhere and at any time that the Government will afford him an opportunity to be heard, and challenges the Government to afford him such an opportunity. If the Government knows, or believes it knows, what the Solicitor General has stated, alluded to above, there can be no difficulty in having this matter of his guilt or innocence of these charges determined by a tribunal that would have full jurisdiction, and guided by rules that have been long established for the furtherance of justice.

I respectfully submit this brief paper, because I have

thought I would not be doing my duty towards Captain Carter if I permitted these most extraordinary statements, made in this most unusual way, to stand upon the files of this court unchallenged, and I therefore move the court to strike the "Brief" of the Solicitor General from the files as irrelevant and scandalous.

J. M. Wilson,
For O. M. Carter.